

Judgment 26/2008

Neil Ross Bassford, John Charles Larose, James Ian Stuart and Simon James Marshall – Royal Court (Criminal Appeals 4,5,6 and 7/2008) – 10 July 2008

Appeal from the Magistrates Court – possession of Class A drugs – appeals against sentence – Aramah and Richards guidelines considered – starting point for possession of Class A drugs should be a custodial sentence – appeals dismissed

**Approved Text
14.07.08**

**IN THE ROYAL COURT OF THE ISLAND OF
GUERNSEY**

CRIMINAL APPEAL

Hearing date – Thursday 10 July 2008

**Before: John Russell Finch Esq., Lieutenant-Bailiff
and Jurats**

Between:

**NEIL ROSS BASSFORD
CHARLES LAROSE
JAMES IAN STUART
SIMON JAMES MARSHALL**

Appellants

v

THE LAW OFFICERS OF THE CROWN

Respondent

Advocate R B Eeles represented N R Bassford, J C Larose and S J Marshall.
Advocate A J Ayres represented J I Stuart (in place of Advocate C Green)
Advocate for the Respondents: F M Russell

Cases, texts and statutes:

ARAMAH (1984) 4 Cr. App. R. (S) 407.

RICHARDS (2002) 18th April, CA.

OREN (1994) 18 GLJ 13.

Background

1. We have dealt with these cases together as the subject-matter is common. The first three Appellants were dealt with together in the Magistrate's Court on 5th June 2008; Marshall on his own. The appeals raise questions in connection with the sentencing of persons for possession of Class A drugs on summary trial. We will do our best to issue what we consider is appropriate and, hopefully, useful guidance to the Magistrate's Court.

2. The Appellant's all pleaded guilty as follows:-

<u>Bassford</u>	-	possession of 2.5 gms of cocaine. Guernsey street value £250 - £500.
<u>Larose</u>	-	possession of 1.1 gms of cocaine. Guernsey street value £110 - £220.
<u>Stuart</u>	-	possession of 1.7 gms of cocaine. Guernsey street value £170 - £340.
and <u>Marshall</u>	-	possession of 1.47 gms of cocaine.

Guernsey street value £140 - £280 and possession of 2 ecstasy tablets, street value £20 - £40.

3. They were sentenced as follows:-

<u>Bassford</u>	-	9 months' imprisonment
<u>Larose</u>	-	6 months' imprisonment
<u>Stuart</u>	-	8 months' imprisonment
and <u>Marshall</u>	-	7 months' imprisonment and 2 weeks imprisonment concurrent, (the latter is not the subject of an Appeal).

The customary forfeiture/destruction orders were made.

4. At their trial, Advocate Eeles appeared for Bassford, Larose and Marshall, Advocate C Green for Stuart. In these Appeals, Advocate Ayres replaces his colleague Advocate Green. Advocate Eeles still appears.
5. The grounds of the Appeals have been set out in extensive detail. In summary, it is suggested the custodial sentences were inappropriate and should be replaced by community punishments, or failing that, much reduced custodial terms.

Sentencing Considerations

6. This Court starts, as indeed did the learned Magistrate, with the English guideline case of *ARAMAH (1984) 4 Cr. APP R (S) 407* for a basic statement of principle - a principle which, it should be noted, is not confined to heroin, but cocaine and other Class A drugs. Dealing with simple possession cases (at page 408-409) Lord Lane C.J. said

"It is at this level that the circumstances of the individual offender become of much greater importance. Indeed, the possible variety of considerations is so wide, including often those of a medical nature that we feel it impossible to lay down any practical guidelines. On the other hand, the maximum penalty for simple possession of Class A drugs is seven years imprisonment and/or a fine and there will be very many cases where deprivation of liberty is both proper and expedient".

7. But we need to consider, as did the Magistrate's Court, the situation as it applies in Guernsey. We respectfully agree with the learned Magistrate's observation (see especially page 15 – F of the sentencing of Bassford and others):

"This Court reiterates that sentencing also in Guernsey has traditionally been more severe than in England and I believe the same approach applies in Jersey. And finally, this Court points out that just as the Royal Court deals

severely with drug trafficking cases, this Court will deal severely with those people who possess even very small amounts of Class A drugs; the starting-point will always be considered as an immediate prison sentence”.

8. For larger-scale importation cases, we have considered the guidelines of the Court of Appeal in *RICHARDS (2002)*, which have been explained and filled out in succeeding cases. It is worth of note that the *RICHARDS* guidelines for 1 – 20 grams of Class A drugs in powder form, set out a sentencing band of 7 – 9 years imprisonment. Mercifully, but properly, the Prosecution dealt with Bassford, Larose and Stuart for simple possession, even though the circumstances showed importation, and kept them in the lower Court, where the maximum sentence is 12 months. These Appellants may consider themselves fortunate.
9. The value of sentencing decision, apart from guideline cases, especially from other jurisdictions is rather limited. We observe that there is nothing in the sentences which is markedly inconsistent with English decisions. We must, however, reiterate that it is conditions in Guernsey, which both the Magistrate’s Court and this Court are only too well aware of, that need to be taken account of. We also emphasize, as we never tire of doing, that sentencing is not a mathematical exercise wherein a quantity of drugs is fed into the computer and a result in years or months comes out. Each case varies and will be assessed individually. We pause to note that the *OREN* guidelines have not only been superseded generally, but overtaken by time.
10. We endorse the approach of the Magistrate based on what seem to us to be the very apt remarks found in *ARAMAH* that we alluded to earlier. Cases of this type do not lend themselves to the detailed production of guidelines as in *RICHARDS*. In our view, the starting-point for possession of Class A drugs should be a custodial sentence, not a fine, the length of which will be determined by the individual factors in the case, including personal mitigation. The only cases where more leniency can be shown will be in our judgment, offences concerning simple possession of infinitesimal amounts. Any other approach would be inconsistent with how sentencing for drugs cases has developed in recent years, particularly since the promulgation of the *RICHARDS* guidelines. We wish to emphasize for the sake of completeness that none of the Appellants was in possession of a minute quantity of cocaine, amounts ranged from 1.1 gms to 2.5 gms. The important thing is the quantity and we see no material inconsistency in the views of Advocate Perry and Tracy Rear.

The Appeals

11. We have noted a considerable amount of mitigation advanced on behalf of each Appellant, as did the Magistrate. It is sometimes forgotten that the purpose of sentencing is not to conduct an exercise based on the welfare and interests of defendants, but to act in the wider interests of justice. We cannot improve on the words of Carey B in *RICHARDS* that: *“misuse of drugs is one of the scourges of European Society”*. That is the simple truth we have to face and deal with very regularly.
12. In each of the cases now before the Royal Court, the Court below assessed the voluminous mitigation with care. As the learned Magistrate said (p 14 - E of transcript in Bassford and others):

“Against the effect on your lives, however, I have to balance the fact that Class A drugs themselves wreck lives”.

13. We endorse this and have seen this time and time again. It is necessary to bear this in mind when assessing the mitigation, however worthy it may be. When sentencing Marshall, the Magistrate observed:-

“.....I know that an immediate prison sentence will have a devastating effect on your business and on those closest to you, but these were matters you should have realized before you chose to buy these drugs”.

This applies in effect to all the Appellants.

Decision

14. The question for the Royal Court is whether the sentences passed were manifestly excessive or wrong in principle. In our view, they were indeed severe, but properly differentiated between the facts and mitigation of the individual cases. The consequences were certainly painful and unfortunate for the Appellants, but this is not our only consideration. It is therefore not possible to interfere with these sentences and we uphold them.

15. Appeals Dismissed.

We strongly commend all three Advocates for their thoroughness and the real help they gave the Court today.

J R Finch